IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 439 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHINDER SINGH DHARIWAL

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA MALKAN for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 11/07/2000

ORAL JUDGEMENT

#. Heard the learned counsel Mr.Anand with advocate Mr.J.M.Malkan on behalf of the petitioner.

#. Rule. Learned APP Mr.S.S.Patel waives service of

rule on behalf of the respondent - State.

#. The petitioner has prayed for appropriate writ in the nature of mandamus and/or direction to quash and set aside the action of taking cognizance of an offence registered vide C.R.No.I 22/2000 at Savli Police Station, District Vadodara qua the petitioner and also prayed to quash the orders dated 14.3.2000 and 17.4.2000 respectively passed by the learned Judicial Magistrate, First Class, Savli, District Vadodara.

That vide impugned order dated 14.3.2000 the learned Judicial Magistrate, First Class, Savli has issued warrant against the present petitioner returnable on the next date on the application of the Investigating Officer of C.R.No.I 22/2000 dated 14.3.2000. That by subsequent order dated 17.4.2000 on the application of the Investigating Officer, the learned J.M.F.C., Savli has passed further order to issue proclamation and publication of the same regarding declaration of petitioner being absconding under section 82 of the Code of Criminal Procedure, 1973 ("Code" for short).

#. District Supply Officer, Vadodara one Pushpak R.Bhatt, lodged a FIR at Savli (Bhadarva) Police Station, District Vadodara on the departmental instructions against one Ajay Majathia, Executive Director of R.S.Petrochemicals Ltd. and one Deepak Kumar Chatterjee, Sales Officer of the said R.S.Petrochemicals Ltd., in respect to the offences made punishable under sections 420, 467, 468, 471 read with section 34 of IPC as well as under sections 3 and 7 of Essential Commodities Act.

It may be noted that the present petitioner is the Managing Director of M/s R.S.Petrochemicals Ltd., Lasundra, Taluka Savli, District Vadodara.

4.A. That the allegations made in the above stated FIR suggest that on receipt of the information; inquiries were made by the Civil Supply Department in respect to certain manufacturers who are alleged to have been supplying the solvent to the non-industrial units and/or to the patrol pumps by preparing bogus bills and manipulating the record. That the said Pushpak R. Bhatt as the District Supplier of Vadodara District made further inquiry in the affairs of M/s R.S.Petrochemicals Ltd. and found that such illegal activities of diverting the solvent to non-industrial units and/or to other patrol pumps were being indulged into by the said M/s R.S.Petrochemicals Ltd., and as such attempts were made to verify the record maintained by M/s R.S.Petrochemicals

Ltd. That it was found that relevant record was seized by the Sales Tax Department. However, on receipt of such relevant record from the Sales Tax Department it was revealed that in all 19 companies; including M/s R.S.Petrochemicals Ltd., were disposing of the solvent on the basis of bogus bills as per the record. That M/s R.S.Petrochemicals Ltd. had supplied solvent to one Parshwa Industries of Sirohi, Rajasthan in between 1.8.1999 to 4.2.2000. That on further inquiry it was found that no such company like Parshwa Industries was in existence at the address stated in the record inspected; but only the board of such company was placed in the plot. That no factory or any such unit was in existence at the said place and one Gaurang Shah who was shown to be the owner of the said company was also not traceable. Inquiries further revealed that, transportation of such solvent was not noted at the check post and no entries in the form No.45(1) were made as required under the provisions of Sales Tax Laws. On the basis of the said fact, it is alleged in the FIR that the Executive Director of M/s R.S.Petrochemicals Ltd. - Ajay Majathia as well as the Sales Officer - Deepak Chatterjee and other subordinate officers have been fabricating the false documents/bills and have illegally supplied the solvent to the different units other than industrial units and thereby have made illegal profits and as such have committed various offences as stated in the FIR.

#. The petitioner has produced the certified copied of impugned FIR and orders vide Annexures-A, B and C respectively. It appears from the record that the Investigating Officer during the course of investigation of C.R.No.22/2000 moved the application dated 14.3.2000 in the court of learned J.M.F.C., Savli (Copy produced at Annexure-B) stating the facts that five persons including the present petitioner have been found absconding and as they were required to be arrested for the said crime prayer was made for the issuance of the warrant till returnable date under section 70 of the Code. That vide impugned order dated 14.3.2000, the learned J.M.F.C., Savli issued the warrant against the persons stated in the application including the present petitioner and made it returnable on the next date. Thereafter, on 14.4.2000 another application (as per Annexure-C) was moved contending that the persons stated in the application including the present petitioner have been evading the execution of the warrant and as they are absconding a proclamation under section 82 of the Code may be issued directing them to remain present at Bhadarva Police Station and/or before the court and be ordered to be published in a daily newspaper. That vide subsequent

impugned order, the learned J.M.F.C., Savli ordered to issue a proclamation and also ordered to publish the same in a daily newspaper. The petitioner has challenged the above stated both the orders dated 14.3.2000 as well as 17.4.2000 alongwith FIR lodged by the District Supply Officer, Vadodara - Pushpak R.Bhatt as stated hereinabove.

#. Learned APP Mr.S.S.Patel has tendered on record the affidavit-in-reply sworn in by one B.S.Nathani, PSI, Savli Police Station dated 26.6.2000 and has contended that, despite making various attempts the petitioner was not available for interrogation. However, six other persons have been arrested during the course of investigation in connection with the said C.R.No.22/2000 and now the chargesheet is also filed against all those persons. That the present petitioner and those absconding persons are shown in the said chargesheet. It is also stated that, there is sufficient material to establish involvement of the said accused including the petitioner in respect to the offence charged against them and thereby no interference of this court is warranted.

#. That in the matter of State through CBI Vs. Dawood Ibrahim Kaskar and others reported vide AIR 1997 SC 2494 the observations made by the Supreme Court vide paragraph 23 being the relevant and material is abstracted hereunder.

"Section 73 is of general application and that in course of the investigation a court can issue a warrant in exercise of power thereunder to apprehend, inter alia a person who is accused of a non-bailable offence and, is evading arrest the related question is as to whether such issuance of warrant can be for his production before the police in aid of investigation.

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Whether the Magistrate, on being moved by the Investigating Agency, will entertain its prayer for police custody will be at his sole discretion which has to be judicially exercised in accordance with section 167(3) of the Code. Since warrant is and can be issued for appearance before the Court only and not before the police and since authorisation for detention in police

custody is neither to be given as a matter of course nor on the mere asking of the police, but only after exercise of judicial discretion based on materials placed before him, it cannot be said that warrant of arrest under section 73 could be issued by the Courts solely for the production of the accused before the police in aid of investigation."

#. In the instant case it appears that the impugned order dated 14.3.2000, is passed by the learned J.M.F.C., Savli; only on the basis of application Annexure-B; wherein the Circle Police Inspector - Baroda Rural has prayed for issuance of warrant against the petitioner. That the impugned order does not disclose that the warrant against the petitioner is issued, to secure the presence of the petitioner before the Court. It is suggestive of the fact that it has been issued solely for the production of the accused before police in aid of the investigation. Under the circumstances the impugned order qua the petitioner is passed without jurisdiction and is bad in law.

Further more the subsequent order dated 14.4.2000; regarding publication of proclamation to declare the petitioner as absconding is also vitiated as the same is based on the fact that warrant issued vide impugned order dated 14.3.2000 could not be executed. As such both the impugned orders could not be sustained.

#. On the basis of the aforesaid discussion, the following operative orders are passed.

(a) The petition is partly allowed. The impugned order dated 14.3.2000 issued by the learned J.M.F.C., Savli issuing the warrant against the petitioner in connection with C.R.No.22/2000 as well as the order dated 17.4.2000 issuing a proclamation against the petitioner declaring him as absconding and to publish the same in a daily newspaper are hereby quashed and set aside;

(b) The prayer made by the petitioner vide para 17(a) stands rejected. However, the petitioner shall be at liberty to approach the trial court for moving an appropriate application to drop the proceedings against the petitioner in connection with C.R.No.22/2000. Interim relief granted earlier stands vacated.

Rule to that extent is made absolute.

(A.K.Trivedi,J.)
(pathan)